IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 655 OF 1993

Maniklal Ramkisan Navandar ..Appellant

versus

1. Sandeep Sudhakar Sant
2. Suresh Narayan Deore
3. The New India Assurance Co. Ltd. ..Respondents

Mr. K. S. Patil h/f. P. N. Joshi for the Appellant.

Mr. Prakash Mahadik h/f. S.R. Singh for Respondent No.3.

CORAM : D. G. DESHPANDE,J.

DATE : 11TH JANUARY,2005

P.C. :

1. Heard learned counsel for the appellant and the respondents.

2. This appeal is filed by the original claimant for enhancement of compensation. The trial court has given all findings in favour of the appellant and has awarded him compensation of Rs.13,010/= with

interest at the rate of 12% per annum from the date of filing of the claim till realisation and the liability was fastened jointly and severally upon all the Respondents.

3. Counsel for the appellant made only one submission and that is that the accident has resulted in fracture on the right arm. The appellant had to be operated, nails and metal plates were required to be implanted and even the doctor has advised that removal of those plates, rods and nails would be advisable and would be proper in the circumstances. Because of the operation and because of the insertion of rod, the doctor opined that the appellant will not be able to lift heavy weight for a longer time. Counsel for the appellant therefore contended that taking into consideration this evidence of the doctor the trial court should have awarded more compensation for loss of amenities of life instead of Rs.5,000/=.

4. Counsel for the Insurance Company drew my attention to the admission of the doctor that the appellant is not a weight lifting champion. He therefore tried to contend that there will be no cause for the appellant to lift heavy weights. These arguments cannot be accepted because in day to day life it is not only that persons doing heavy

weight lifting are required to be considered when such kind of claim is made. In day to day life every one has to lift heavy weights in the house or in the market or at any other place or at station. If disability has affected the capacity and efficiency of the appellant, and it was to last with him till the plates were removed and he is completely healed, the Trial court could have considered that aspect and enhanced the compensation. It is true that the claim of Rs.10,000/= for loss of amenities to the life is on higher scale but considering the circumstances, the nature of the injury the period of hospitalisation and treatment, Rs.3,000/= (Rupees Three Thosuand) would be sufficient enhancement to the compensation. In the result, I pass the following order:

ORDER

. Appeal is partly allowed. The Respondents to pay Rs.16,010/= to the appellant instead of Rs.13,010/=. Rest of the order to remain as it is with proportionate costs.

11.1.2005 (D.G. DESHPANDE,J.)

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